

DECISION

PHI
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-210681**DATE:** August 12, 1983**MATTER OF:** Baeten Construction Co.**DIGEST:**

Where improper Government action (misdirection of bidder by authorized representative of contracting officer) is the paramount cause for a bid being time-stamped 1 minute after bid opening, and no other bids had been opened, late low bid was properly accepted.

Baeten Construction Co. (Baeten) protests the General Services Administration (GSA) consideration of the late low bid of Coronado Corporation (Coronado) submitted on project No. R-CO-81-132.

We deny the protest.

The invitation for bids, as amended, set bid opening date for December 28, 1982, at 1:30 p.m. Bids were to be received at the Business Service Center (BSC), building 41, Denver Federal Center. The BSC was relocated from the first to the second floor of building 41 only a few days before the Christmas holiday. When this was discovered by the contracting officer on the morning of bid opening, it was decided that the bids were to be received and time-stamped in the new BSC and opened in the South Dakota Room on the same floor. To notify bidders of the new BSC location, GSA placed three temporary, hand-drawn, signs with instructions and diagrams on the first floor. No sign or number was placed at the BSC identifying it, and the permanent signs identifying the original first floor BSC remained. The contracting officer directed a procurement assistant to assist the bidders.

According to the procurement assistant, she intercepted the Coronado representative about 15 feet from the new BSC at about 1 minute prior to bid opening. Because she was under the mistaken impression that bids were to be received, as opposed to opened, in the South Dakota Room, she

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redirected the bidder to that room despite the representative's statement that he had already been there and was directed to the new BSC. When they entered the South Dakota Room, a procurement clerk advised that the time stamp was in the new BSC and, after locating it, the Coronado bid was time-stamped at 1:31 p.m., 1 minute late. None of the other bids had been opened.

The contracting officer concluded that, because of these circumstances, the Coronado bid was late due to misdirection by an authorized Government representative. The Coronado bid was considered and award made to Coronado.

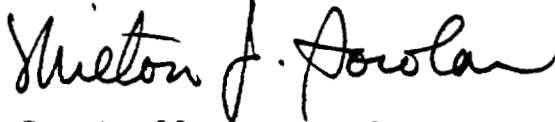
A bidder has the responsibility of assuring the timely arrival of its bid to the place designated in the solicitation. However, a hand-carried bid which is received late may be accepted where improper Government action was the paramount cause for the late delivery and consideration of the late bid would not compromise the integrity of the competitive bidding system. Improper Government action may be misdirection caused by Government personnel, solicitation instructions, or building signs. A misdirected late bid may be considered so long as the bidder acted reasonably and did not significantly contribute to the lateness. Dale Woods, B-209459, April 13, 1983, 83-1 CPD 396, and cases cited therein.

The protester has submitted evidence to show that Coronado significantly contributed to the lateness of the bid. Specifically, the other five bidders were able to deliver timely bids by ascertaining the location of the new BSC, and bidders, other than the protester, state that Coronado's representative entered the South Dakota Room after the bid opening time. Also, the protester notes that Coronado's version of the events of that day conflicts with the others.

Despite this, nothing submitted contradicts the Government's position that, prior to opening, the procurement assistant, specifically authorized by the contracting officer to assist bidders, misdirected the Coronado representative. Furthermore, it appears that the time consumed by the misdirection converted what would have been a timely bid into a late bid. This is because the misdirection occurred just outside the new BSC where bids were to be stamped and where Coronado's representative was heading. From this, we conclude that timely bid submission was imminent. Therefore, the protester has shown no evidence that the Government's action was not the paramount cause for the bid being late.

Consideration of Coronado's bid would not compromise the integrity of the competitive bidding system. None of the bids had been opened when the Coronado bid was time-stamped; Coronado would not have had the opportunity to alter its bid. L.V. Anderson & Sons, Inc., B-189835, September 30, 1977, 77-2 CPD 249.

Since the Government's action caused Coronado's bid to be late and acceptance of the late bid did not compromise the integrity of the competitive bidding system, the protest is denied. Therefore, Baeten's claim for damages, including lost profits, attorney's fees, and other costs, which would be limited to bid preparation costs in any event, is denied. Hub Testing Laboratories--Claim for Costs, B-199368.3, June 18, 1982, 82-1 CPD 602; American Shipbuilding Company, B-207218; B-207218.2, November 9, 1982, 82-2 CPD 424.

for 
Comptroller General
of the United States